III.   REMARKS

1.   Claims 12, 17, 19, 21-25 and 43 have been cancelled without prejudice. Claims 6, 33, 35, 38, 39, and 46 have been amended.

2.   Applicants respectfully submit that claims 35-42 recite statutory subject matter under 35 USC 101. Claim 35 has been amended to recite a method "executed in a server," thus tying the claims to another statutory class.

3.   Applicants respectfully submit that claims 46-48 meet the requirements of the second paragraph of 35 USC 112. Claim 46 is directed to a server (i.e. a machine) further limited by components "configured to" operate a specific way. Thus the additional features of a memory, an examination block, a selector, and a compiler further limit the scope of the server.

4. Applicants respectfully submit that claims 2-14, 16-25, and 33-48 are patentable over the combination of Kaydyk et al. (US 6,209,111, Kaydyk"), Ginter et al. (US 5,892,900, "Ginter") or Watanabe et al. (US 6,084,888, "Watanabe") and Sherer et al. (US 5,459,854, "Sherer") under 35 USC 103(a).

4.1   The combination of Kaydyk, Ginter or Wanatabe and Sherer fails to disclose or suggest:

  selecting a device-specific content component corresponding to the property of the wireless communication device from a set of different versions of device-specific content components to be loaded in a device specific content packet to the wireless communication device;

  supplementing said selected device specific content component with a first data structure that includes at least information related to description properties of said selected device specific content component, information related to charging for use of the selected device specific content component, and system attributes of said selected content component; and

  forming the device specific content packet as a single file specifically for the wireless communication device, by including said selected device specific content component for use in the wireless device, the first data structure, and a second data structure as part

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of the device specific content packet, the second data structure including at least information related to a description of said selected device specific content component and information needed by the wireless device to run said selected device specific content component,

as recited by claim 35.

4.1.1 None of the references disclose or suggest selecting a device-specific content component corresponding to the property of the wireless communication device from a set of different versions of device-specific content components to be loaded in a device specific content packet to the wireless communication device. Kaydyk, Ginter, and Wanatabe are silent with respect to these features. Sherer discloses different versions of a TransmitChain procedure written for 286 and 386 environments. A driver determines its environment and relocates the appropriate procedure to the beginning of a segment. None of the procedures are part of a set of device-specific content components to be loaded in a device specific content packet.

The Examiner notes that optional or conditional elements do not limit the scope of the claim. However, present claim 35 later includes "forming the device specific content packet as a single file specifically for the wireless communication device, by including said selected device specific content component for use in the wireless device." Thus, in the present claims, the selected device-specific content component is actually loaded into a device specific content packet. The element is not optional or conditional and differentiates the present claim from the cited art. Applicants submit that none of the references disclose or suggest this feature.

4.1.2 None of the references disclose or suggest supplementing said selected device specific content component with a first data structure that includes at least information related to description properties of said selected device specific content component, information related to charging for use of the selected device specific content component, and system attributes of said selected content component. None of the references disclose or suggest supplementing a content component with a first data structure that includes information related to charging for use of the selected device specific content component.

4.1.3 None of the references disclose or suggest forming the device specific content packet as a single file specifically for the wireless communication device, by including said selected device

specific content component for use in the wireless device, and a second data structure including at least information needed by the wireless device to run said selected device specific content component. Applicants find no disclosure in any of the references related to this feature.

Applicant note the Examiner's statement that the claim appears to read on all wireless packets with headers. Applicants respectfully disagree. Applicants find nothing in the art, cited or otherwise, that discloses or suggests a selected device specific content component supplemented with a first data structure that includes information related to charging for use of the selected device specific content component, and a second data structure including at least information needed by the wireless device to run said selected device specific content component. Applicants respectfully request a reference that discloses these features.

Furthermore, Applicants note that the obviousness rejection does not point out where in the references a "second data structure including at least information needed by the wireless device to run said selected device specific content component" may be found. The rejection never mentions this feature of the present claims.

> When "the PTO asserts that there is an explicit or implicit teaching or suggestion in the prior art, it must indicate where such a teaching or suggestion appears in the reference". In re Rijckaert, 28 USPQ2d 1955, 1057 (Fed. Cir. 1993).

Applicants refer to 37 CFR 1.104(c)(2):

> In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. (Emphasis added)

and MPEP §707:

> When considered necessary for adequate information, the particular figure(s) of the drawing(s), and/or page(s) or paragraph(s) of the reference(s), and/or any relevant comments briefly stated should be included.

MPEP §706.07 emphasizes the specificity requirement of 37 C.F.R. § 1.104(c) by stating:

> The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.

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Applicants submit that it is unclear which features of the cited art the Examiner equates with the "second data structure including at least information needed by the wireless device to run said selected device specific content component" and, as a result, a clear issue has not been developed. Applicants request more specificity in the rejection, for example, by citing columns and line numbers in the reference and a comparison among features in the reference and elements of the present claims.

Applicants further note that Official Notice is taken that a "device specific content packet" is common and well known. Applicants respectfully disagree. Claim 35 as amended further defines the device specific content packet as formed as a single file specifically for the wireless communication device, by including said selected device specific content component for use in the wireless device, the first data structure, and a second data structure as part of the device specific content packet, the second data structure including at least information related to a description of said selected device specific content component and information needed by the wireless device to run said selected device specific content component.

Applicants respectfully challenge the assertion that such a device specific content packet, as defined in the claims, is common knowledge or well know in the art and respectfully request references and proper motivation arguments to support this assertion.

Applicants respectfully submit that such a device specific content packet as defined is not taught or suggested by the art. Applicants respectfully submit that a device specific content packet with these features are not common knowledge or well know in the art because such features are not capable of instant and unquestionable demonstration as being well known. In addition, Applicants respectfully submit that there is no evidence that such a device specific content packet is known in the art. Furthermore, determining whether a device specific content packet having these features is, or is not common knowledge or well know in the art requires specific knowledge of the prior art which must be supported with a reference.

From MPEP 2144.03 A., second paragraph

> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. In re Ahlert, 424 F.2d

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at 1091, 165 USPQ at 420-21. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979) ("[W]hen the PTO seeks to rely upon a chemical theory, in establishing a prima facie case of obviousness, it must provide evidentiary support for the existence and meaning of that theory."); *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

Because none of the cited references disclose or suggest the features of claim 35 cited above, the combination of Kaydyk, Ginter or Wanatabe and Sherer cannot disclose or suggest all the features of claim 35 and cannot render this claim unpatentable.

4.2   The combination of Kaydyk, Ginter or Wanatabe and Sherer fails to disclose or suggest:

supplementing said at least one device specific content component with a first data structure that includes information related to charging for use of the at least one device specific content component, describes system attributes needed to run the at least one device specific content component, and provides information identifying the content;

examining the data structure of the device specific content packet and identifying download properties of the at least one device specific content packet and compatibility of the at least one device specific content component with the particular wireless device; and

forming at least one device specific content packet as a single file specifically for the particular wireless device from the at least one device specific content component supplemented with the first data structure and a second data structure that describes a content of the device specific content packet and provides information required by the wireless communication device to run the at least one device specific content component,

as recited by claim 33.

4.2.1 None of the reference disclose or suggest supplementing said at least one device specific content component with a first data structure that includes information related to charging for use of the at least one device specific content component, and describes system attributes needed to run the at least one device specific content component.

None of the references disclose or suggest these features of claim 35. Applicants note that the rejection does not point out where in the references these features may be found and that it is unclear which features of the cited art the Examiner equates with these features. Applicants respectfully request more specificity in the rejection,

4.2.2   None of the reference disclose or suggest examining the data structure of the device specific content packet and identifying download properties of the at least one device specific content packet and compatibility of the at least one device specific content component with the particular wireless device.

Applicants respectfully challenge the assertion that these elements of the claim are common knowledge or well know in the art and respectfully request references and proper motivation arguments to support this assertion. Applicants respectfully submit that examining the data structure and identifying download properties and compatibility are not taught or suggested by the art. Applicants respectfully submit that such an examination and identification are not common knowledge or well know in the art because such features are not capable of instant and unquestionable demonstration as being well known. In addition, Applicants respectfully submit that there is no evidence that such examination and identification are known in the art. Furthermore, determining whether a device specific content packet having these features is, or is not common knowledge or well know in the art requires specific knowledge of the prior art which must be supported with a reference.

4.2.3   None of the reference disclose or suggest forming at least one device specific content packet as a single file specifically for the particular wireless device from the at least one device specific content component supplemented with the first data structure and a second data structure that describes a content of the device specific content packet <u>and provides information required by the wireless communication device to run the at least one device specific content component</u>.

Applicants find no disclosure in any of the references related to this feature and nothing in the action that indicates where in the references these features may be found. Applicants respectfully request more specificity in the rejection.

4.2.4   Applicants have amended claim 33 to positively recite "identifying download properties of the at least one device specific content packet and compatibility of the at least one device

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specific content component with the particular wireless device. Applicants respectfully submit that the present language is <u>not</u> non functional descriptive information.

Because none of the cited references disclose or suggest the features of claim 33 cited above, the combination of Kaydyk, Ginter or Wanatabe and Sherer cannot disclose or suggest all the features of claim 33 and cannot render this claim unpatentable.

4.3   The combination of Kaydyk, Ginter or Wanatabe and Sherer fails to disclose or suggest:

>   a selector configured for selecting a device-specific content component corresponding to the property of the wireless communication device from said stored different versions of device-specific content components to be loaded in a device specific content packet to the wireless communication device; and

>   a compiler configured for supplementing said selected device specific content component with a first data structure that includes at least information related to description properties of said selected device specific content component, information related to charging for use of the selected device specific content component, and system attributes of said selected content component;

>   the compiler further configured for forming said device specific content packet as a single file specifically for the wireless communication device by including the selected device specific content component, the first data structure, and a second data structure as part of the device specific content packet, the second data structure including at least information related to a description of the selected device specific content component and information needed by the wireless device to run the selected device specific content component,

as recited by claim 46.

4.3.1 Applicants note the statement that the features of information stored in memory are representative of non-functional descriptive information. Applicants respectfully disagree.

From MPEP 2106.01:

>   Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional

descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component.

Paragraph [0011] of the present published specification states:

> With respect to the present invention, content refers e.g. to applications (application software) and other objects which are used in connection with a wireless communication device and which can be loaded in and possibly also deleted from the wireless communication device. These objects can be such that can be used to change various audiovisual properties, such as ringing tones, background images, etc. Also various game applications, files, documents, calendar data, video clips, images, digital business cards, etc., can be part of contents in view of this invention. Furthermore, the contents may comprise various links and shortcuts to databases, Internet pages, or the like.

Thus, the device specific content components of the present claim impart functionality and the information stored in memory represents "functional descriptive material," and not "nonfunctional descriptive material."

MPEP 2106.01 continues:

> When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.

A memory is clearly a computer readable medium and thus claim 46 recites functional descriptive material recorded on a computer-readable medium which will distinguish over the cited art.

4.3.2   None of the references disclose or suggest a selector configured for selecting a device-specific content component corresponding to the property of the wireless communication device from a set of different versions of device-specific content components to be loaded in a device specific content packet to the wireless communication device. Kaydyk, Ginter, and Wanatabe are silent with respect to these features. Sherer discloses different versions of a TransmitChain procedure written for 286 and 386 environments. A driver determines its environment and relocates the appropriate procedure to the beginning of a segment. None of the procedures are part of a set of device-specific content components to be loaded in a device specific content packet.

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4.3.3   None of the references disclose or suggest a compiler configured for supplementing said selected device specific content component with a first data structure that includes at least information related to description properties of said selected device specific content component, information related to charging for use of the selected device specific content component, and system attributes of said selected content component.   None of the references disclose or suggest supplementing a content component with a first data structure that includes information related to charging for use of the selected device specific content component.

None of the references disclose or suggest a compiler further configured for forming said device specific content packet as a single file specifically for the wireless communication device by including the selected device specific content component, the first data structure, and a second data structure as part of the device specific content packet, the second data structure including at least information related to a description of the selected device specific content component and information needed by the wireless device to run the selected device specific content component.   Applicants find no disclosure in any of the references related to this feature.
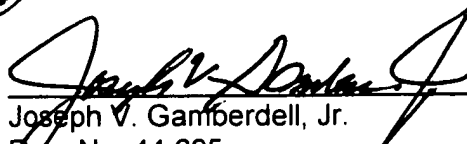
At least for these reasons, the combination of Kaydyk, Ginter, Wanatabe and Sherer fails to render claims 2-14, 16-25, and 33-48 unpatentable.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance.   Accordingly, favorable reconsideration and allowance is respectfully requested.   Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

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